

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC ROMANSKI, CRAYTON GREGORY TONEY,
JOSEPH G. O'CONNOR, and MAURICE R. PAQUIN

Appeal 2006-2035
Application 09/923,936
Technology Center 3600

Decided: March 16, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and ANTON W.
FETTING, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-3. Claim 4 stands objected to as dependent from a rejected claim but allowable if rewritten in independent form. Claims 5-13 stand withdrawn from consideration by the Examiner as claiming a nonelected invention.

THE INVENTION

The Appellants claim a flexible vessel for containing or transporting fluid or fluidisable material. The vessel is particularly useful for containing or transporting a large volume of fluid, such as fresh water, having a density less than that of salt water (Specification 1: 14-20). Claim 1 is illustrative:

1. A flexible containment vessel for the transportation and/or containment of cargo comprising a fluid or fluidisable material, said vessel comprising:

an elongated flexible tubular structure comprised of fabric having a first side and a second side;

said tubular structure being impervious and having a front end and a rear end;

means for sealing said front end and said rear end;

means for filling and emptying said vessel of cargo; and

means for rendering said tubular structure buoyant comprising forming said fabric having at least one thermoplastic or thermoset coating that renders the fabric buoyant.

THE REFERENCES

Hawthorne	US 2,997,973	Aug. 29, 1961
McCullough	US 4,897,303	Jan. 30, 1990

THE REJECTION

Claims 1-3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hawthorne in view of McCullough.

OPINION

We affirm the aforementioned rejection.

The Appellants do not argue the claims separately (Br. 5-7). We therefore limit our discussion to the sole independent claim, i.e., claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Hawthorne discloses a vessel for transporting or storing liquids or fluidisable solids having a specific gravity less than that of sea water (col. 1, ll. 11-13). “[T]he vessel comprises a closed tube of flexible material, such as a natural or synthetic rubber impregnated fabric, which has a streamlined nose adapted to be connected to towing means, and one or more pipes communicating with the interior of the vessel and such as to permit filling and emptying of the vessel” (col. 1, ll. 20-26). The fabric can be proofed with butadiene elastomer, fluorosilicates, and cold setting resins (col. 1, ll. 66-68). “The buoyancy is supplied by the liquid contents of the vessel and its shape depends on the degree to which it is filled” (col. 1, ll. 30-33).

McCullough discloses a buoyant, open-celled fibrous structure for insulation and/or floatation comprising a batting, felt or non-woven web of resilient shape formed from elongatable, non-linear carbonaceous fibers (col. 2, ll. 19-24; col. 3, l. 58 – col. 4, l. 5). “The fibrous structure is coated with a water insoluble hydrophobic substance” (col. 2, ll. 25-27). The coating material “may consist of any light weight water insoluble settable or curable substance that can be deposited so as to adhere to the fibers or filaments. Suitable substances include high molecular weight waxes, haloaliphatic resins, thermoset and thermoplastic resins, ionomers, silicone products, polysiloxanes, and the like” (col. 2, l. 64 – col. 3, l. 2).

The Appellants argue that “Hawthorne already teaches the use [of] the vessel’s contents to provide the necessary buoyancy” (Br. 6). That disclosure, i.e., “[t]he buoyancy is supplied by the liquid contents of the

vessel and its shape depends on the degree to which it is filled” (col. 1, ll. 30-33), appears to be a disclosure of how the vessel is buoyant when it contains liquid. It does not appear to be a disclosure that the vessel, when empty, is not buoyant. Because Hawthorne’s natural or synthetic rubber used to impregnate the fabric (col. 1, ll. 21-22), and fluorosilicates and cold setting resins used to proof the flexible material (col. 1, ll. 66-70), are among the Appellants’ coating materials (Specification 12: 26-32), it reasonably appears that like the Appellants’ materials, Hawthorne’s materials render the empty vessel buoyant.¹

The Appellants argue that “the increase of buoyancy of a floating object is not always a desirable attribute as it can result in instability and undesirable towing or handling characteristics” (Br. 6). The Appellants have provided no evidence in support of that argument, particularly evidence relating to the Appellants’ type of vessel, and arguments of counsel cannot take the place of evidence. *See In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

The Appellants argue that there would have been no motivation for one of ordinary skill in the art to combine the disclosures of Hawthorne and McCullough (Br. 6). That motivation would have been to coat Hawthorne’s vessel with McCullough’s coating material to increase the buoyancy of the vessel when it is empty so that it does not sink.

The Appellants argue that there is no suggestion in Hawthorne that increased buoyancy is desirable (Br. 7). There also is no suggestion in

¹ Hawthorne does not disclose the impregnation technique. However, it reasonably appears that any conventional impregnation technique, such as dipping, rolling, or spraying, will also coat the surface to at least some extent.

Hawthorne that increased buoyancy is undesirable. Nor is there a disclosure in Hawthorne that the fabric impregnation synthetic rubber (col. 1, l. 22) and the proofing materials (col. 1, ll. 66-68) do not render the empty vessel buoyant. It would have been apparent to one of ordinary skill in the art that buoyancy of Hawthorne's empty vessel is desirable, and that if the buoyancy is not provided by the synthetic rubber impregnation material or the proofing material, then a material such as that of McCullough should be applied to provide the desired buoyancy.

For the above reasons we conclude that the Appellants' claimed invention would have been obvious to one of ordinary skill in the art over the applied prior art.

DECISION

The rejection of claims 1-3 under 35 U.S.C. § 103 over Hawthorne in view of McCullough is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(2006).

AFFIRMED

hh

*FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE-10TH FL.
NEW YORK, NY 10151*